changed by a statute passed September 1, 1920, providing that the period should start running on a claim for fraud when the fraud was discovered. The complaint set forth the date of discovery of the fraud as May 1, 1919. The defendant moved for judgment on the pleadings. *Held*, that the motion be denied. *Hopkins* v. *Lincoln Trust Co.*, 187 N. Y. Supp. 883 (Sup. Ct.).

For a discussion of the principles involved, see NOTES, *supra*, p. 193.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — IMMUNITY OF GOVERNOR FROM ARREST. — The Governor of Illinois was indicted for embezzlement alleged to have been committed during a previous term as State Treasurer. *Held*, that he is liable to arrest and trial during his term of office. *People* v. *Small*, Ill. Circ. Ct., 7th Jud. Circ., decided July 27, 1921 (not officially reported).

For a discussion of the principles involved, see NOTES, *supra*, p. 185.

CORPORATIONS — CORPORATIONS *DE FACTO* — LIABILITY OF CORPORATION FOR TORT OF ASSOCIATES BEFORE INCORPORATION. — The plaintiff was injured in a collision between two auto busses operated by associates who later incorporated as the defendant corporation. The busses had been purchased in the corporate name two days before the accident. At the same time, a certificate of incorporation had been drawn and signed. A statute provided that an incorporating body which had previously recorded its certificate with the county clerk should become a corporation upon the date of filing said certificate at the office of the Secretary of State. (1896 N. J. COMP. STAT., p. 1604, § 10.) The certificate was recorded the day after the accident and filed four days thereafter. *Held*, that the defendant corporation is liable. *Frawley* v. *Tenafly Transportation Co.*, 113 Atl. 242 (N. J.).

For a discussion of the principles involved, see NOTES, *supra*, p. 198.

CORPORATIONS — DIRECTORS AND OTHER OFFICERS — POWER OF DIRECTORS: VOLUNTARY PETITION IN BANKRUPTCY UNDER CHARTER FORBIDDING DIRECTORS TO ASSIGN. — The charter of a corporation provided that the directors should have authority to dispose of the whole property of the corporation with the consent of the stockholders. By resolution of the board of directors, without the consent of the stockholders, the corporation filed a voluntary petition in bankruptcy. *Held*, that the adjudication should not be vacated. *In re De Camp Glass Casket Co.*, 272 Fed. 558 (6th Circ.).

The present Bankruptcy Act, as amended, allows a corporation to become a voluntary bankrupt, but does not specify by whom the corporate decision shall be made. BANKRUPTCY ACT, § 4a, 1919 BARNES, FEDERAL CODE, § 9089. A similar situation existed before the amendment, as to the commission of an act of bankruptcy by admission of insolvency. BANKRUPTCY ACT, § 3a (5), 1919 BARNES, FEDERAL CODE, § 9088. In the absence of specific charter provision or state legislation, power to do either is generally held to be in the directors. *In re C. Moench & Sons Co.*, 130 Fed. 685 (2d Circ.); *In re S. & S. Mfg. & Sales Co.*, 246 Fed. 1005 (N. D. Ohio); *Dodge* v. *Kenwood Ice Co.*, 204 Fed. 577 (8th Circ.). See 25 HARV. L. REV. 562. This power is usually rested on the power of committing an act of bankruptcy by making an assignment for the benefit of creditors. *Dodge* v. *Kenwood Ice Co.*, *supra; Home Powder Co.* v. *Geis*, 204 Fed. 568 (8th Circ.); *In re Foster Paint & Varnish Co.*, 210 Fed. 652 (E. D. Pa.). Occasionally the result is reached without this step, by deduction from the general authority of the directors to manage the corporation. *In re S. & S. Mfg. & Sales Co.*, *supra; In re United Grocery Co.*, 239 Fed. 1016 (S. D. Fla.). It has been held, however, that an admission of insolvency could not be made by directors not having the power to assign for the benefit of creditors. *In re Bates Machine Co.*, 91 Fed. 625 (D. Mass.).

See 1 REMINGTON, BANKRUPTCY, 2 ed., § 44; 1 LOVELAND, BANKRUPTCY, 4 ed., § 157. This would also be true of a voluntary petition in bankruptcy. See 1 LOVELAND, BANKRUPTCY, 4 ed., § 158. *Cf. Bell* v. *Blessing*, 225 Fed. 750 (9th Circ.). As the charter provision in the principal case is evidently intended to limit the directors only when their act might be adverse to the interests of the stockholders, it should be construed as permitting them to make an assignment for the benefit of creditors when the corporation is insolvent. So the decision seems correct. See *Fitts* v. *Custer Slide Mining Co.*, 266 Fed. 864 (8th Circ.).

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — DISREGARDING THE CORPORATE FICTION WHERE NO ILLEGALITY IS INVOLVED. — The B corporation owed the A corporation upon a contract. X, the sole stockholder of the A corporation, was personally indebted to the B corporation, this debt being secured by A corporation stock. At maturity, X failed to pay, and the A corporation directed the B corporation to deduct from its contract debt to A the amount due to B from X. The B corporation refused. On a foreclosure sale it bought in the stock pledged by X as security, and now sues in equity as stockholder of the A corporation. *Held*, that the conduct of the B corporation was so inequitable as to preclude its suing in equity as stockholder. *United States Gypsum Co.* v. *Mackey Wall Plaster Co.*, 199 Pac. 249 (Mont.).

The language of the court is flavored with ready willingness to disregard the corporate fiction. It is intimated that X's obligation is such as might be set off by the B corporation in a contract action by the A corporation. See *Guy* v. *Hudson River Electric Power Co.*, 187 Fed. 12, 15. *Contra*, *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 54 N. W. 1115; *New York Ice Co.* v. *Parker*, 21 How. Pr. (N. Y. Super.) 302. And the refusal of the B corporation to deduct X's individual debt from its indebtedness to the A corporation is thought inequitable because, the A corporation and X being identical, the creditor has harshly chosen to sacrifice his debtor's collateral rather than receive full payment. In this case, as has been noticed in many others, the just result is attainable without violating the corporate conception. See 17 HARV. L. REV. 201; 27 HARV. L. REV. 386; 30 HARV. L. REV. 762; 31 HARV. L. REV. 894. When the corporation sought to have X's individual indebtedness deducted, in effect it directed its debtor to pay in part to X. Payment to the creditor's order is payment to the creditor. Since there was no question of impairing the corporate margin of safety by this transfer of assets to a stockholder, the B corporation could have reduced its indebtedness to the A corporation by doing as directed; and its choice of the harsher alternative was inequitable.

CORPORATIONS — RECEIVERS — JURISDICTION OF EQUITY TO APPOINT A RECEIVER OF A SOLVENT PRIVATE CORPORATION WHERE NO OTHER RELIEF IS SOUGHT. — The plaintiff was a shareholder and director of the defendant corporation. The shareholders were deadlocked and the majority of the board of directors were conducting the business with a view to driving the plaintiff out of it and diverting the assets to their own use. Relief by ordinary means was impossible. The plaintiff brought a bill for a temporary receivership. *Held*, that a receiver be appointed. *Schick* v. *Hood*, 30 Dist. Rep. 584 (Pa.), 78 Leg. Intel. 557.

There is no such thing as a substantive right to a receivership; courts are not agencies for running private enterprises. *Mabon* v. *Ongley Electric Co.*, 156 N. Y. 196, 50 N. E. 805. A receivership is a remedy. See 1 CLARK, RECEIVERS, § 238. It is usually ancillary to other relief sought by the bill. See, *e. g.*, *Aiken* v. *Colorado River Co.*, 72 Fed. 591 (9th Circ.). But there seems to be no reason why it may not be granted as the sole remedy, if the plain-